

# Order

Entered: November 17, 2004

Michigan Supreme Court  
Lansing, Michigan

ADM File No. 2004-46

Proposed Amendment of  
Rule 7.211 of the  
Michigan Court Rules

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Maura D. Corrigan  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman  
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.211 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted on the Court's website at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining.]

Rule 7.211 Motions in Court of Appeals

(A)-(B) [Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1)-(8) [Unchanged.]

(9) Motion to Seal Court of Appeals File in Whole or in Part.

(a) Trial court files that have been sealed in whole or in part by a trial court order will remain sealed while in the possession of the Court of Appeals. Public requests to view such trial court files will be referred to the trial court.

(b) Materials that are subject to a protective order entered under MCR 2.302(C) may be submitted for inclusion in the Court of

Appeals file in sealed form if they are accompanied by a copy of the protective order. A party objecting to such sealed submissions may file an appropriate motion before the Court of Appeals.

- (c) Except as otherwise provided by statute or court rule, the procedure for sealing a Court of Appeals file is governed by MCR 8.119(F).
- (d) Any party or interested person may file an answer in response to a motion to seal a Court of Appeals file within 7 days after the motion is served on the other parties, or within 7 days after the motion is filed with the Court of Appeals, whichever is later.
- (e) An order granting a motion shall include a finding of good cause, as defined by MCR 8.119(F)(2), and a finding that there is no less restrictive means to adequately and effectively protect the specific interest asserted.
- (f) An order granting or denying a motion to seal a Court of Appeals file in whole or in part may be challenged by any person at any time during the pendency of an appeal.

Staff Comment: The proposal would amend MCR 7.211(C) by creating new subrule (9) to clarify the procedure for motions to seal Court of Appeals files and to unseal previously sealed files. The proposed rule incorporates by reference the procedures for sealing files in the trial courts set forth in MCR 8.119(F). The proposal also contains additional language unique to cases pending in the Court of Appeals.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2005, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2004-46. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).

WEAVER, J. I write separately because I would publish for comment the court rule amendment as it was proposed by the Court of Appeals, rather than the court rule amendment contained in the order above.

The court rule amendment as proposed by the Court of Appeals would not refer to the procedures set out in the text of MCR 8.119(F), but would instead spell out the

relevant provisions for sealing a Court of Appeals file. This would be clearer and more straightforward for both the appellate bar and the courts. Further, the court rule amendment as proposed by the Court of Appeals would allow any interested person, not only a party, to move to seal a Court of Appeals file, unlike the procedures in MCR 8.119(F).

The court rule amendment as proposed by the Court of Appeals reads as follows:

[Additions are indicated by underlining.]

#### Rule 7.211 Motions in Court of Appeals

(A)-(B)[Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1)-(8)[Unchanged.]

(9) Motion to Suppress Court of Appeals File in Whole or in Part.

- (a) Trial court files that are subject to trial court orders that seal or suppress their contents will continue to be suppressed while they are in the possession of the Court of Appeals. Public requests to view such trial court files will be referred to the trial court for purposes of public access.
- (b) Materials that are subject to a protective order entered under MCR 2.302(C) may be submitted for inclusion in the Court of Appeals file in sealed form if they are accompanied by a copy of the protective order. A party objecting to such sealed submissions may file an appropriate motion before the Court of Appeals.
- (c) Except as otherwise provided by statute or court rule, the Court of Appeals may not suppress a Court of Appeals file in whole or in part except by order entered on motion by a party or interested person.
- (d) The court must provide any party or interested person the opportunity to file an answer in response to a motion to suppress a Court of Appeals file. Such answers must be filed within 7 days after the motion is served on the other parties,

or within 7 days after the motion is filed with the Court of Appeals, whichever is later.

- (e) A motion to suppress a Court of Appeals file in whole or in part shall identify the specific interest to be protected.
- (f) An order granting a motion shall include a finding of good cause and a finding that there is no less restrictive means to adequately and effectively protect the specific interest asserted.
- (g) In determining whether good cause has been shown, the court must consider:
  - (i) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and
  - (ii) the interest of the public.
- (h) The court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.
- (i) An order granting or denying a motion to suppress a Court of Appeals file in whole or in part may be challenged by any person at any time during the pendency of an appeal.
- (j) Whenever the court grants a motion to suppress a Court of Appeals file, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 17, 2004

*Angela Z. Meyer*  
Deputy Clerk